

to be the servants of the telegraph company except when engaged in the transmission of messages for the railroad company and in certain construction work.

It will be observed that while the companies in many respects are independent they are also, in some respects at least, dependent. The telegraph is a facility of the railroad company and necessary to its operations, the télégraph company doing what the railroad company did for itself before the agreement and but for the agreement with the telegraph company would have to do. The railroad company has an interest in the receipts of the other company and is concerned in their amount and the maintenance and increase of the telegraph business. The control of the telegraph company's instrumentalities and its offices and operators is in a "competent joint superintendent of telegraph," in whose appointment the railroad company has a voice and whom it also may discharge. It is, however, not possible, and keep this opinion within a reasonable length, to detail the many ways in which the two companies are related, and while it may be said that there is a railroad business in which the telegraph company has no concern, that is, business distinctly railroad, yet it is also so far concerned with the telegraph business as to make its efficient and successful operation of interest to it. To promote such operation was the purpose of the two letters which are the basis of the indictment, and the business comes within the description of the statute and is "current."

In reaching this conclusion it is not necessary to consider the character of the statute, whether it be penal or remedial, or whether it is to have a strict or a liberal construction. It is one justified by the words of the statute and in view of the facts by its history, and is not precluded by anything that was said at the time the act was amended. As originally enacted and carried into the Revised Statutes (§ 3985) it forbade the carrying, "other-

wise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, or to some article carried at the same time by the same stage-coach, railway car, or other vehicle."

The section coming before the Attorney General for construction, the opinion was expressed that it only intended to prohibit the transportation of communications between third parties and did not prohibit the transportation of communications, whatever their substance, belonging to the carrier or relating to the carrier's business. 21 Op. Atty. Genl. 394. It is the contention of the Government that when § 184 came to be enacted that construction was narrowed by the use of the word "current," Senator Bacon, who suggested it, in effect so declaring, and urged it as an amendment so that the new section might not relate, as the senator said, to the "financial transactions" of the carriers, "or anything of that kind, but to current business and operations." To this comment counsel for the Government adds the definition of "current" from the dictionaries as "now passing; present in its course; as the current month or year"; and supposes this to be the meaning which was in Senator Bacon's mind and urges the view that "the 'current business' of the carrier, therefore, is that business which is, at any particular time, in the present course of its transactions." But so confined in meaning it is not very clear what enlargement the new section is on the old one. We cannot so confine it. The statute certainly cannot mean that the described business should have no relation to the past and no connection with the future, however near. It may be that there might be a business so completely consummated or so much in speculation that it could not be described as "current," but the letters with which this case is concerned are not of either character. They regard not only immediate but day-by-day action and so

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relate to "current," as distinguished from exceptional business.

*Judgment affirmed.*

MR. JUSTICE McREYNOLDS took no part in the consideration and decision of the case.

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